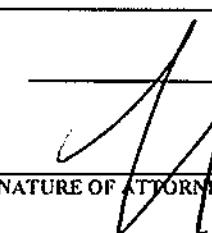


JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

I. (a) PLAINTIFFS DUANE JONES, Jr.		DEFENDANTS NCO FINANCIAL SYSTEMS, INC.	
(b) County of Residence of First Listed Plaintiff _____		County of Residence of First Listed Defendant _____	
(c) Attorney's (Firm Name, Address, Telephone Number and Email Address) Craig Thor Kimmel, Esquire Kimmel & Silverman, P.C. 30 E. Butler Pike Ambler, PA 19002 (215) 540-8888		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)	
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)	
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6
IV. NATURE OF SUIT (Place an "X" in One Box Only)			
CONTRACT		TORTS	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	
		PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	
REAL PROPERTY		CIVIL RIGHTS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 449 Other Civil Rights	
		PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 520 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	
V. ORIGIN (Place an "X" in One Box Only)		<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property of Value 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court		<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	
VI. CAUSE OF ACTION		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. Section 1692	
		Brief description of cause: Fair Debt Collection Practices Act	
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMANDS
			CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
VIII. RELATED CASE(S)		(See instructions): JUDGE DOCKET NUMBER	
Explanation:			
DATE	SIGNATURE OF ATTORNEY OF RECORD		

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: PO Box 4243, Allentown, PA

Address of Defendant: 507 Prudential Road, Horsham, PA 19044

Place of Accident, Incident or Transaction:

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes No

CIVIL: (Place ✓ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations

7. Civil Rights

8. Habeas Corpus

9. Securities Act(s) Cases

10. Social Security Review Cases

11. All other Federal Question Cases 15 U.S.C. § 1692

(Please specify)

B. *Diversity Jurisdiction Cases:*

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)

7. Products Liability

8. Products Liability — Asbestos

9. All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Therkimmel, counsel of record do hereby certify:

- Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- Relief other than monetary damages is sought.

DATE: 10-22-10

Craig Therkimmel

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 10-22-10

Craig Therkimmel

Attorney-at-Law

57100

Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Duane Jones, Jr. : CIVIL ACTION
v. :
NCO Financial Systems, Inc. : NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

10-22-10

Date

Craig Thorkimmel
Attorney-at-law

215-540-8888

Telephone

FAX Number

Duane Jones, Jr.
Attorney for

Kimmel@CreditLaw.com

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

DUANE JONES JR.,)
Plaintiff)
v.) Case No.:
NCO FINANCIAL SYSTEMS, INC.,) COMPLAINT AND DEMAND FOR
Defendant) JURY TRIAL
) (Unlawful Debt Collection Practices)

COMPLAINT

DUANE JONES JR. ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28

U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business in the Commonwealth of Pennsylvania and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff is a natural person residing in Allentown, Pennsylvania.

7. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with its principal place of business located at 507 Prudential Road, Horsham, Pennsylvania, 19044.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect an alleged debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act ("FDCPA") is a
comprehensive statute, which prohibits a catalog of activities in connection with
the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA
imposes civil liability on any person or entity that violates its provisions, and
establishes general standards of debt collector conduct, defines abuse, and provides
for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
FDCPA declare certain rights to be provided to or claimed by debtors, forbid
deceitful and misleading practices, prohibit harassing and abusive tactics, and
proscribe unfair or unconscionable conduct, both generally and in a specific list of
disapproved practices.

12. In particular, the FDCPA broadly enumerates several practices
considered contrary to its stated purpose, and forbids debt collectors from taking
such action. The substantive heart of the FDCPA lies in three broad prohibitions.
First, a "debt collector may not engage in any conduct the natural consequence of
which is to harass, oppress, or abuse any person in connection with the collection
of a debt." 15 U.S.C. § 1692d. Second, a "debt collector may not use any false,
deceptive, or misleading representation or means in connection with the collection
of any debt." 15 U.S.C. § 1692e. And third, a "debt collector may not use unfair
or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. §

1 1692f. The FDCPA is designed to protect consumers from unscrupulous
2 collectors, whether or not there exists a valid debt, broadly prohibits unfair or
3 unconscionable collection methods, conduct which harasses, oppresses or abuses
4 any debtor, and any false, deceptive or misleading statements in connection with
5 the collection of a debt.

7 13. In enacting the FDCPA, the United States Congress found that “[t]here
8 is abundant evidence of the use of abusive, deceptive, and unfair debt collection
9 practices by many debt collectors,” which “contribute to the number of personal
10 bankruptcies, to marital instability, to the loss of jobs, and to invasions of
11 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing
12 laws and procedures for redressing debt collection injuries to be inadequate to
13 protect consumers. 15 U.S.C. § 1692b.

16 14. Congress enacted the FDCPA to regulate the collection of consumer
17 debts by debt collectors. The express purposes of the FDCPA are to “eliminate
18 abusive debt collection practices by debt collectors, to insure that debt collectors
19 who refrain from using abusive debt collection practices are not competitively
20 disadvantaged, and to promote consistent State action to protect consumers against
21 debt collection abuses.” 15 U.S.C. § 1692e.

FACTUAL ALLEGATIONS

15. At all pertinent times hereto, Defendant was allegedly hired to collect a debt relating to a loan.

16. The alleged debt at issue arose out of transactions that were primarily for personal, family or household purposes.

17. Beginning in or around October 2009, Defendant constantly and continuously placed harassing and abusive collection calls to Plaintiff seeking and demanding payment for an alleged consumer debt.

18. Defendant contacted Plaintiff on his home and cellular telephones as well as on his work telephone.

19. Defendant contacted Plaintiff at his place of employment despite knowing, or having should known, that Plaintiff was not permitted to accept personal calls of this nature at the workplace.

20. Further, in October 2009, Defendant's employee, Ryan Stevenson, threatened Plaintiff that he would be subjected to wage garnishment if he did not begin making payments on the alleged debt.

21. Upon information and belief, at the time Defendant threatened to garnish Plaintiff's wages, it had no intention to do so, and in Pennsylvania, an individual's wages cannot be garnished for failure to pay a debt.

22. Defendant's threats to garnish his wages caused Plaintiff to remit

1 | payments.

2 23. Further, Defendant informed Plaintiff that his account was accruing
3 interest, when, upon information and belief, Defendant had no contractual
4 entitlement to seek interest and basis to make such a statement.
5

6 24. Also, Defendant threatened to repossess Plaintiff's belongings when it
7 knew such action could not or would not actually be undertaken by Defendant.

9 25. Within five (5) days of its initial communication with Plaintiff,
10 Defendant failed to send Plaintiff written notification informing him of his rights to
11 dispute the debt and/or request validation of the debt.

13 26. Had Defendant sent written notification to Plaintiff, Plaintiff would
14 have been alerted to his rights instead of being misled, deceived, or harassed into
15 making payments on the alleged debt.

16 27. Then, in January 2010, Plaintiff was forced to contact Defendant in
17 order to seek to modify the terms of repayment of the alleged debt.

19 28. Most recently, on or about January 29, 2010, Defendant contacted
20 Plaintiff in an attempt to collect the alleged debt.

CONSTRUCTION OF APPLICABLE LAW

23 29. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry,
24 deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes
25 strict liability, a consumer need not show intentional conduct by the debt collector.

1 to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2nd Cir. 1996);
2 see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding
3 unintentional misrepresentation of debt collector's legal status violated FDCPA);
4
5 Clomon v. Jackson, 988 F. 2d 1314 (2nd Cir. 1993).

6 30. The FDCPA is a remedial statute, and therefore must be construed
7 liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235
8 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts
9 interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d
10 1162 (9th Cir. 2006). "Because the FDCPA, like the Truth in Lending Act (TILA)
11 15 U.S.C § 1601 *et seq.*, is a remedial statute, it should be construed liberally in
12 favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

13 31. The FDCPA is to be interpreted in accordance with the "least
14 sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168
15 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v.
16 Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA
17 was not "made for the protection of experts, but for the public - that vast multitude
18 which includes the ignorant, the unthinking, and the credulous, and the fact that a
19 false statement may be obviously false to those who are trained and experienced
20 does not change its character, nor take away its power to deceive others less
21 experienced." Id. The least sophisticated consumer standard serves a dual purpose
22
23
24
25

1 in that it ensures protection of all consumers, even naive and trusting, against
2 deceptive collection practices, and protects collectors against liability for bizarre or
3 idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

COUNT I
DEFENDANT VIOLATED THE
FAIR DEBT COLLECTION PRACTICES ACT

32. In its actions and methods to collect a disputed debt, Defendant violated the FDCPA in the following ways:

- a. Communicating with Plaintiff in connection with the collection of the alleged debt at an unusual place, or a place known or which should be known to be inconvenient to the consumer, in violation of 15 U.S.C. § 1692c(a)(1);
 - b. Engaging in conduct of which the natural consequence is to harass, oppress, or abuse Plaintiff, in violation of 15 U.S.C. § 1692d;
 - c. Causing a telephone to ring or engaging Plaintiff in telephone conversation repeatedly and continuously with intent to annoy, abuse, or harass Plaintiff, in violation of 15 U.S.C. § 1692d(5);
 - d. Using false, deceptive, or misleading representation or means in connection with the collection of the alleged debt, in violation of 15 U.S.C. § 1692e;
 - e. Representing or implicating that nonpayment of the alleged debt would result in the seizure and garnishment of Plaintiff's property and wages, in violation of 15 U.S.C. § 1692e(4);
 - f. Threatening to take any action that cannot legally be taken or that is not intended to be taken, in violation of 15 U.S.C. § 1692e(5);

- 1 g. Using false representation and deceptive means to collect or
2 attempt to collect the alleged debt, in violation of 15 U.S.C. §
3 1692e(10);
4 h. Using unfair or unconscionable means to collect or attempt to
5 collect a debt, in violation of 15 U.S.C. § 1692f; and
6 i. Failing to, within five days after the initial contact with Plaintiff in
7 connection with the collection of the alleged debt, send the
8 consumer a written notice containing any of the following; a
9 statement that unless the consumer disputes the validity of the debt
10 within 30 days of the initial communication the debt will be
11 assumed to be valid, a statement that if the consumer disputes the
12 debt in writing within the 30 day period the debt collector is
13 required to verify the debt, a statement that, upon written request
14 within the 30 day period, the debt collector will provide the
15 consumer with the name and address of the original creditor, in
16 violation of 15 U.S.C. § 1692g(a), 15 U.S.C. § 1692g(a)(3), 15
17 U.S.C. § 1692g(a)(4), and 15 U.S.C. § 1692g(a)(5).

18 33. As a result of the above violations of the FDCPA, Defendant is liable
19 to Plaintiff in the sum of Plaintiff's actual damages, statutory damages, and
20 attorney's fees and costs.

21
22 **WHEREFORE**, Plaintiff, DUANE JONES JR., respectfully prays for a judgment
23 as follows:

- 24 a. Declaratory judgment that Defendant's conduct violated the
FDCPA;

- 1
- 2 b. All actual compensatory damages suffered pursuant to 15
U.S.C. § 1692k(a)(1);
- 3
- 4 c. Statutory damages of \$1,000.00 for each violation of the
FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- 5
- 6 d. All reasonable attorneys' fees, witness fees, court costs and
other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.
§ 1692k(a)(3); and
- 7
- 8 e. Any other relief deemed appropriate by this Honorable Court.
- 9

JURY DEMAND

Pursuant to Civil Rule 38, Plaintiff hereby demands a trial by jury on all issues in this action, and any issues relating to the amount of attorneys' fees and litigation costs to be awarded should Plaintiff prevail on any of her claims in this action.

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

By: _____

Craig Thor Kimmel
Attorney ID # 57100
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888
Fax: (215) 540-8817
Email: kimmel@creditlaw.com

Date: 10-22-10